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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ERICKSON PRODUCTIONS, INC.,

Plaintiff,

v.

WELBROOK SENIOR LIVING, LLC;
CMD REAL ESTATE GROUP, LLC;
HEALTH CARE BUILDING
INVESTMENT, LLC; and JOHN DOE

Defendants.

Civil Case No.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMPLAINT

Plaintiff Erickson Productions, Inc. (“Erickson Productions” or “Plaintiff”), by and through undersigned counsel, hereby demands a trial by jury of all claims and issues so triable, and, as and for its Complaint for copyright infringement against Defendants Welbrook Senior Living, LLC (“Welbrook”); CMD Real Estate Group, LLC (“CMD”); Health Care Building Investment, LCC (“HCBI”); and John Doe (collectively “Defendants”) hereby asserts and alleges as follows:

NATURE OF THE ACTION

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3 1. This is an action for copyright infringement against Defendants for
4 unauthorized and infringing uses of Plaintiff's copyrighted photograph identified as "Image
5 9068" (hereinafter the "Photograph").

6 2. Plaintiff seeks damages and other relief related to Defendants' knowing and
7 willful infringements of Plaintiff's copyrights and exclusive license in the original Photograph.
8

PARTIES

9
10 3. Jim Erickson is a professional photographer who makes his living by taking and
11 licensing photographs.

12 4. Mr. Erickson created and owns the copyrights to the Photograph.

13 5. Plaintiff Erickson Productions, a California corporation, is the sole distributor and
14 exclusive licensor of Mr. Erickson's photographic images.

15 6. Erickson Productions has an exclusive license covering all rights to photographs
16 created by Mr. Erickson, including the Photograph at issue in this action.

17 7. Erickson Productions' primary place of business is Petaluma, California.

18 8. Upon information and belief, Defendant Welbook is a real estate development
19 company that operates retirement communities in various states, including California.
20

21 9. Upon information and belief Defendants CMD and/or HCBI own and/or operate
22 the Welbrook website <http://www.wecmd>

23 10. [lbrook.com](http://www.lbrook.com). Defendant CMD is identified as the registrant organization for the
24 website and Defendant HCBI owns the "Welbrook Senior Living" trademark.
25

26 11. Upon information and belief, John Doe is an individual or entity who copied
27 Plaintiff's photograph without permission and used it in the creation of Welbrook's website.
28

1 12. Upon information and belief, John Doe acted under the supervision and/or control
2 of one or all of the other Defendants in creating Welbrook's website.

3 **JURISDICTION AND VENUE**

4 13. Jurisdiction for Plaintiff's claims lie with the United States District Court for the
5 Northern District of California pursuant to the Copyright Act of 1976, 17 U.S.C. §§101, *et seq.*,
6 28 U.S.C. § 1331 (conferring original jurisdiction "of all civil actions arising under the
7 Constitution, laws, or treaties of the United States"), and 28 U.S.C. § 1338(a) (conferring original
8 jurisdiction over claims arising under any act of Congress relating to copyrights).

9 14. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) since a substantial portion
10 of the alleged misconduct by Defendants giving rise to the claims asserted herein occurred in this
11 District and 28 U.S.C. § 1400(a) since Defendant may be found in this District.

12 15. This Court has personal jurisdiction over the Defendants.

13 16. Upon information and belief, Defendant Welbrook operates several senior living
14 facilities in the state of California, including locations at 7898 California Ave, Riverside, CA
15 92504 and 3210 Sepulveda Blvd, Torrance, CA 90505.

16 17. Upon information and belief, CMD and HCBI are limited liability real estate
17 companies registered in the State of California.

18 18. All Defendants conduct substantial and ongoing business in the State of California.

19 19. Defendants copied Plaintiff's Photograph without permission and then published
20 the Photograph on the Welbrook website, which Defendants use to solicit business from customers
21 and investors residing in California.

22 20. Defendants infringed Plaintiff's copyrights in California, including by publishing
23 and displaying Plaintiff's Photograph on their website that was published and consumed in
24 California.

21. Upon information and belief, Welbrook's website domain is registered to Ken Magargee, Principal of Welbrook's Management Team, who is a resident of the State of California.

FACTUAL ALLEGATIONS

22. Defendants infringed Plaintiff's copyrights and interfered with its exclusive license by copying and publishing the Photograph on Welbrook's website without permission.

23. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiff's copyrighted Photograph and a true and correct copy of Defendants' website as it was displayed on 3/29/2016.

24. On or about March 31, 2016, Plaintiff, through counsel, sent a cease and desist letter to Welbrook demanding that the unauthorized copy of Plaintiff's Photograph be removed immediately.

25. On April 1, 2016, a corporate representative of Welbrook represented that Plaintiff's Photograph had been removed from the Welbrook website. Beyond that limited response, Welbrook refused to cooperate further with Plaintiff's effort to investigate this infringement, including refusing to divulge the identity of Defendant John Doe, the unidentified "consultant" that Welbrook's corporate agent claimed "created" Welbrook's website.

26. Defendants have exploited Plaintiff's copyrighted photograph for commercial use on their website without permission or license.

27. Defendants intentionally edited Plaintiff's Photograph to remove or obscure Plaintiff's copyright watermark, demonstrating knowing and willful misconduct.

28. Defendants' refusing to cooperate with Plaintiff's efforts to investigate this infringement also demonstrate willfulness.

29. Because Defendants have refused to cooperate or disclose information relating to their infringing use of Plaintiff's works, the full scope of Defendants' infringing activities has not yet been ascertained.

30. Copyrights in the Photograph were registered with the U.S. Copyright Office under registration VA 1-410-391 prior to Defendants' infringements.

COUNT I
DIRECT, CONTRIBUTORY, AND/OR VICARIOUS COPYRIGHT INFRINGEMENT
AGAINST ALL DEFENDANTS

31. Plaintiff repeats and re-alleges each allegation set forth above as if set forth fully herein.

32. As alleged more fully above, Defendants copied, published, and displayed Plaintiff's Photograph without permission on the www.welbrook.com website.

33. The conduct and omissions by Defendants alleged herein infringed and violated Plaintiff's exclusive license to the Photograph, which encompasses the full range of copyrights in the Photograph, in violation of the U.S. Copyright Act, 17 U.S.C. § 101, *et seq.*

34. Through its actions, Defendant John Doe materially contributed to, facilitated, induced, or otherwise is responsible for the directly infringing acts carried out by the other Defendants, including by copying Plaintiff's Photograph and making it available to the other Defendants for use on their website and/or publishing it to Defendants' website on their behalf.

35. John Doe exercised control over the copying and publishing of the Photograph and had the ability to prevent the other Defendants' infringing conduct.

36. Defendants' infringements were willful, knowing, and intentional.

37. By copying, distributing, displaying, publishing, and otherwise exploiting Plaintiff's copyrighted creative work, Defendants infringed Plaintiff's copyrights in the creative work identified herein and caused Plaintiff significant injuries, damages, and losses in amounts to be determined at trial.

38. Plaintiff seeks all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendants' profit attributable to the infringements, and

1 damages suffered as a result of the lack of compensation, credit, and attribution and from any
2 diminution in the value of Plaintiff's copyrighted work.

3
4 39. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and
5 litigating this matter.

6
7 **WHEREFORE**, Plaintiff respectfully prays for judgment on its behalf and for the
8 following relief:

9 1. A trial by jury of all claims and issue so triable;

10 2. A permanent injunction against Defendants from copying, displaying, distributing,
11 advertising, promoting, and/or exploiting in any manner the copyrighted work identified herein,
12 and requiring Defendants to deliver to the Court for destruction or other appropriate disposition all
13 relevant materials, including digital files of Plaintiff's photograph and all copies of the infringing
14 materials described in this complaint that are in the control or possession or custody of Defendants;

15 3. All allowable damages under the Copyright Act, including, but not limited to,
16 statutory or actual damages, including damages incurred as a result of Plaintiff's loss of licensing
17 revenue and Defendants' profits attributable to infringements, and damages suffered as a result of
18 the lack of credit and attribution;

19 4. Plaintiff's full costs, including litigation expenses, expert witness fees, interest, and
20 any other amounts authorized under law, and attorneys' fees incurred in pursuing and litigating
21 this matter;

22 5. Any other relief authorized by law, including punitive and/or exemplary damages;
23 and

24 6. For such other and further relief as the Court deems just and proper.
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4 Dated: November 15, 2016

5 Respectfully submitted,

6 /s/ Kevin McCulloch
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